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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 648.

M. J. WICKS, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE

FILED FEBRUARY 3, 1877.

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THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY
vs.
M. J. WICKS. } No. 984.

Transcript of record from Supreme Court of Tennessee, at Jackson.

J. B. Heiskell for the State.
J. A. Taylor " Shelby County.
Estis & Jackson for Wicks.

UNITED STATES OF AMERICA, *ss.*

a The President of the United States to the Honorable the Judges of the Supreme Court of the State of Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court of Tennessee, before you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of Tennessee and the County of Shelby and M. J. Wicks, wherein was drawn in question the validity of a statute of the said State of Tennessee, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of such its validity; and wherein was drawn in question the construction of a clause of the Constitution of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, a manifest error hath happened, to the great damage of the said M. J. Wicks, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and
b full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record of proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 27th day of November, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] H. E. ANDREWS,
Clerk U. S. Circ't Court, W. D. T.

c (Endorsed:) M. J. Wicks, plff. in error, vs. The State of Tennessee and the County of Shelby, defts. in error. Writ of error. Filed 29th Nov., 1876. Jno. H. Freeman, clk.

1 THE STATE OF TENNESSEE.

Pleas before the Supreme Court of the State of Tennessee for the Western Division thereof, at Jackson, on the fourth Monday of September, A. D. 1876.

Present, Hon. James W. Deaderick, chief justice; Peter Turney, Robert McFarland, Thomas J. Freeman, and John L. T. Sneed, judges.

Be it remembered that heretofore, to wit, on the 5th day of April, A. D. 1873, the following transcript of a record was filed in the office of the clerk of the supreme court of said state, at Jackson, to wit:

STATE OF TENNESSEE AND COUNTY OF SHELBY *vs.* M. J. WICKS AND OTHERS. } No. 215. Shelby Chancery Docket.

STATE OF TENNESSEE.

2 Transcript from Second Chancery Court of Shelby County, in case of State of Tennessee and County of Shelby vs. M. J. Wicks and others, Hon. Saml. P. Walker, chancellor of said court, presiding, in words and figures as follows, to wit:

Cost Bond.

We, the County of Shelby, and W. W. McDowell, surety, and M. J. Wicks, and H. E. Jackson, acknowledge ourselves indebted to the State of Tennessee in the sum of two hundred and fifty dollars. To be void if the said W. W. McDowell, surety for the county, and H. E. Jackson, surety for M. J. Wicks, complainant and defendant, in a case made upon an agreed state of facts to be
3 determined by the chancellor, shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill.

This 16 day of January, 1873.

COUNTY OF SHELBY,
By W. W. McDOWELL, *Atty.*
W. W. McDOWELL,
Surety for Co.
M. J. WICKS,
By ESTIS & JACKSON, *Attys.*
H. E. JACKSON,
Surety for Wicks.

Bill.

STATE OF TENNESSEE AND COUNTY OF SHELBY *vs.* M. J. WICKS. 745. N. R. D. } Submitted on agreed state of facts.

It is agreed that the Savings Bank of Memphis, now doing business in the city of Memphis, was duly organized under its charter granted by the Legislature of Tennessee on the 29th February, 1856.

4 That its present capital stock subscribed amounts to the sum of $60,000.00, divided into 600 shares of $100 each.

That the above-named defendant, M. J. Wicks, was, throughout the year 1872, the owner of 560 shares of said capital stock, of the value of $56,000.00.

That the State of Tennessee and County of Shelby, claiming the right under existing revenue laws to tax said stock, caused said 560 shares to be assessed against said Wicks for 1872, at the value aforesaid—the state imposing thereon a tax of 40 cents on the $100 of said valuation, making a state tax of $224.00, and the county of Shelby a tax of $1.20 on the $100 of valuation, making a county tax of $672.00, which the state and county of Shelby now demand payment of from said Wicks. The legality of said taxes is disputed. The said Wicks denies the right of the state and

5 county of Shelby to assess said stock for taxation as aforesaid.

He claims that under the 3d section of the Savings Bank of Memphis charter, as follows, viz: "*That said institution shall pay to the state an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes,*" said shares of stock are exempt from taxation, except the aforesaid tax of one-half of one per cent. to the state on each share of the capital stock, (which it is admitted has been regularly paid by said bank to the state,) and that all laws imposing other or additional taxes on said shares of stock impair the obligation of the contract contained in the charter of the Savings Bank of Memphis, and are in violation of the Constitution of the United States of America, and therefore void.

6 It is agreed that the charter of the Savings Bank of Memphis, and revenue and other laws, so far as applicable to the subject, may be treated as a part of this case, and may be read on the trial from any book or document containing the same, as if they were copied herein.

It is agreed that the Second Chancery Court of Shelby County may try this case and shall decide whether the state and County of Shelby have the right to impose said taxes on said stock, in addition to the aforesaid tax of one-half of one per cent. to the state on each share of the capital stock, as provided in the 3d section of the bank's charter.

From the decision of said court either party may appeal, on giving bond for costs.

It is agreed that if the final decision shall be in favor of

7 the state and county of Shelby, the judgment shall be rendered against the said M. J. Wicks for the aforesaid sums of $224 and $672 in favor of the state and county respectively, with interest thereon from and after the 1st Jan., 1873.

On the other hand, if the final decision should be in favor of defendant Wicks, then the judgment shall be, that said taxes are illegally assessed; that said shares of stock are exempt from all

other taxation than the aforesaid one-half of one per cent. on each share of the capital stock, as provided in the 3d section of the charter as aforesaid, and that the collection of said taxes be enjoined, and for such other appropriate decree as the court may deem proper to render, in order to protect said Wicks or his assigns from taxation on said shares of stock.

8 Pending the final decision of this case, the state and county of Shelby agree to suspend the collection of said taxes from said M. J. Wicks, and also like taxes assessed against other stockholders in said Savings Bank of Memphis.

The costs of this suit are to abide the final result.

M. J. WICKS,
By ESTIS & JACKSON, *his Attys.*
W. W. McDOWELL,
Atty. for State and County.

STATE OF TENNESSEE, }
COUNTY OF SHELBY. }

Before me personally appeared Howell E. Jackson, atty. for abovenamed defendant, and makes oath that the questions and controversy involved in the above case are real, and that this proceed-

9 ing is had in good faith to determine the rights of the parties.

H. E. JACKSON.

Subscribed and sworn to before me, Jany. 16th, 1873.

CRABTREE BELCHER, *D. C. & M.*

Decree.

On the 27 day of March, 1873, the following proceedings were had and appear of record in minute book —, p. —, to wit:

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY }
745 *vs.* N. R. D. }
M. J. WICKS. }

This cause was heard on this 27 day of March, 1873, upon the agreed case and record, and the court being satisfied therefrom that the State of Tennessee and the County of Shelby are not entitled to enforce the collection of the state and county taxes

10 therein mentioned against the said M. J. Wicks, upon the shares of capital stock in the Savings Bank of Memphis, and that the shares of said capital stock of said bank are exempt and not liable to said taxes by the terms of said charter. It is, therefore, ordered and decreed by the court, (in pursuance of the terms of said agreed case,) that said taxes are illegally assessed; that said shares of stock are exempt from all other taxation than the one-half of one per cent. on each share of stock subscribed, as provided in the 3rd section of the charter of said Savings Bank of Memphis, and that the collection of said taxes be, and the same is

hereby, perpetually enjoined. The costs of this cause will be certified for payment as prescribed by law.

From this decree the State of Tennessee and the County of
11 Shelby pray an appeal to the next term of the Supreme Court of Tennessee, to be held at Jackson, on first Monday in April, 1873; which appeal is granted by the State.

Appeal Bond.

We, Shelby County, and W. W. McDowell, surety, acknowledge ourselves indebted to M. J. Wicks & als. in the sum of two hundred and fifty dollars; to be void if the said Shelby County and State of Tennessee, who have prayed for and obtained an appeal from a decree of the Second Chancery Court of Shelby County, in a cause in which State of Tennessee and Shelby County are complainants, and M. J. Wicks and als. are defendants, to the next term of the Supreme Court of Tennessee for the District of West Tennessee, to be held at Jackson, Madison county, on the first Monday in April next, shall pay and satisfy all such costs as
12 shall be awarded against county by said supreme court.

COUNTY OF SHELBY. [SEAL.]
W. W. McDOWELL. [SEAL.]

(Endorsed:) Filed 2 day of Apr., 1873. M. D. L. Stewart, C. & M.

And at the September term, A. D. 1876, of the Supreme Court of Tennessee for the western division thereof, at Jackson, the following opinion was delivered:

[Here follows opinion and dissenting opinion (MS. record, pp. 12–82).—See record in No. 646, Farrington vs. The State, &c., pp. 4–18.]

And on Monday, November 20th, one of the days of the September term, 1876, of said supreme court, the following decree was pronounced in this cause, to wit:

THE STATE OF TENNESSEE AND THE COUNTY OF Shelby
vs.
M. J. VICKS AND THE SAVINGS BANK OF Memphis.
} No. 215. Shelby Chy. Docket.

This cause was heard upon the transcript of the record from the Second Chancery Court of Shelby County, and after argument by counsel, and full consideration by the court, it appearing that in the same there is manifest error, it is therefore ordered, ad-
83 judged, and decreed by the court that the decree of said chancery court be reversed, vacated, and annulled.

And upon consideration of the claim made by defendant, M. J. Wicks, that the revenue act of the Tennessee legislature of 1869–70,

ch. 81, section 1, providing that all shares of stock in any bank, corporation, or company, now or hereafter incorporated by or in pursuance to any law of this state or any other state, and all public bonds or stocks, except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation," under and by virtue of which act defendant's shares of stock in the Savings Bank of Memphis were assessed for state and county taxes, impaired
84 the obligation of the contract of exemption from taxation contained in the charter of the said Savings Bank of Memphis, and violated section 10, article 1, of the Constitution of the United States, this court doth adjudge and decide this point and claim against defendant, on the ground that the shares of stock in the said Savings Bank of Memphis are not the property or thing exempted by the charter of said bank, but other and different, and so not within the protection of said charter and of said section of the Constitution of the United States.

It is therefore further ordered, adjudged, and decreed by the court that the sums of $224.00 state tax and $672.00 county tax were properly assessed against the defendant, M. J. Wicks, as
85 state and county taxes for the year 1872 on his shares of stock in the Savings Bank of Memphis, and that the State of Tennessee do therefore recover of the said M. J. Wicks, and of said Savings Bank of Memphis, as his surety, the said sum of $224.00 state tax, and that the County of Shelby do also recover of said Wicks, and his surety, the said bank, said sum of $672.00 county tax, for all which execution may issue, and that both of said sums bear interest at the rate of six per cent. from the first day of January, 1873, until paid.

It is further ordered, adjudged, and decreed that the State of Tennessee and County of Shelby recover of said M. J. Wicks, and of his surety, the said Savings Bank of Memphis, and of H. E. Jackson, their surety on cost bond, the costs of this cause in
86 this court and the court below, for which execution may issue.

Petition for Writ of Error.

To the Hon. Jas. W. Deaderick, Chief Justice of the Supreme Court of the State of Tennessee:

The petition of M. J. Wicks vs. The State of Tennessee and the County of Shelby in said state.

Petitioner respectfully represents unto your honor, that lately in the Supreme Court of Tennessee there was pending a cause wherein the State of Tennessee and the County of Shelby, in said state, were complainants, and petitioner was defendant, in which a final decree was rendered in said supreme court, at
87 the September term, 1876, against the defendant, (petitioner,) in favor of the respective complainants in said cause.

Petitioner further represents to your honor, that in the said cause and proceeding there was drawn in question one of the matters described in the 25th section of the judiciary act of the United States and in the 709 section of the Revised Statutes of the United States, viz: the construction of section 10 of article I. of the Constitution of the United States, and under which the petitioner (defendant in said suit) claimed a right, exemption, and immunity from further taxation than ½ of one per cent. on his shares of the capital stock of the Savings Bank of Memphis
88 (a corporation chartered by the legislature of the State of Tennessee) by virtue of the following clause in the charter of said bank, viz: "Said institution shall pay to the state an annual tax of ½ of one per cent. on each share of capital stock, which shall be in lieu of all other taxes." After the grant of this charter, the State of Tennessee and the County of Shelby, in said state, respectively assessed and imposed further and additional taxes on petitioner's shares in the capital stock of said Savings Bank of Memphis, and petitioner in said suit claimed exemption and immunity therefrom, and insisted that such additional taxation impaired the obligation of the contract evidenced by said charter and
89 violated the above-mentioned section of the Constitution of the United States. But the decision of the said court was adverse to the right, exemption, and immunity thus specially set up and claimed by petitioner, and it so appears of record, the said decree reciting and holding as follows: "Defendant claims that the revenue act of the Tennessee legislature of 1869 and '70, ch. 81, sec. 1, providing, &c., under and by virtue of which act defendant's shares of stock in the Savings Bank of Memphis were assessed for state and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Savings Bank of Memphis, violated section 10 of article I. of the Constitution of the United States, this court doth ad-
90 judge and decide this point and claim against the defendant, on the ground that the shares of stock in said Savings Bank of Memphis are not the property or thing exempted by the charter of said bank, but other and different, and so not within the prohibition of the said charter and of said section of the Constitution of the United States."

Petitioner therefore prays your honor to endorse an allowance of a writ of error, and that the proper citation be signed by your honor, to the end that the record and proceedings in said cause may be removed into the Supreme Court of the United States, to the end that said error may be corrected, and petitioner, as in duty
91 bound, will ever pray.

HARRIS, McKISSICK & TURLEY,
ESTIS, JACKSON & ELLETT,
Solicitors for M. J. Wicks.

STATE OF TENNESSEE, AT JACKSON, *Nov.*, 1876.

The writ of error prayed for in the foregoing petition is granted and allowed, in pursuance of law in such cases. The plaintiff in error will execute a good bond in the sum of one thousand dollars, to be approved when presented to me.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov. 29th, 1876. Jno. H. Freeman, clk., by S. D. Hays, D. C.

Bond.

Supreme Court of the United States.

STATE OF TENNESSEE AND COUNTY OF SHELBY
vs.
M. J. WICKS.

92 Know all men by these presents, that we, M. J. Wicks, as principal, and ——— ———, as sureties, are held and firmly bound unto the State of Tennessee and to the County of Shelby in the sum of one thousand dollars, to be paid to the said State of Tennessee and County of Shelby, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 25th November, 1876.

Whereas, the above-named M. J. Wicks hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the
93 Supreme Court of the State of Tennessee, at its September term, 1876, at Jackson: Now, therefore, the condition of this obligation is such, that if the above-bound and named M. J. Wicks shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

M. J. WICKS, [SEAL.]
By ESTIS & ELLETT, *Attys.* [SEAL.]
R. A. PARKER. [SEAL.]
THO. H. ALLEN.
JNO. T. FARGASON.
NATHAN ADAMS.

I, H. E. Andrews, clerk, &c., do hereby certify that the sureties on the above bond are good and sufficient for the penalty thereof. Nov. 25th, 1876.

H. E. ANDREWS,
Clerk U. S. Circuit Court Western Dist. Tenn.

94 Approved Nov., 29th 1876.

JAS. W. DEADERICK, *C. J.*

(Endorsed:) Filed Nov'r 29th, 1876. Jno. H. Freeman, clk., by S. D. Hays, D. C.

Citation.

THE UNITED STATES OF AMERICA

To the State of Tennessee and the County of Shelby, in said state, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on second Monday in October *in October* next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of Tennessee, at Jackson, wherein M. J. Wicks is plaintiff in error and you are defendants in error, to show cause, if any there be, why
95 the decree rendered against said plaintiff in error as in the writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Jas. W. Deaderick, chief justice of the Supreme Court of Tennessee, this 28th day of November, 1876.

JAS. W. DEADERICK, *C. J.*

Service of the above citation acknowledged for the State of Tennessee and for the County of Shelby, Nov. —, 1876.

STATE OF TENNESSEE,
By J. B. HEISKELL, *Atty. Genl.*
COUNTY OF SHELBY,
By JULIUS A. TAYLOR, *Atty.*

96 THE STATE OF TENNESSEE.

I, John H. Freeman, clerk of the Supreme Court of the State of Tennessee for the Western Division, at Jackson, do hereby certify that the foregoing is a full, true, and perfect transcript of the record in the case of the State of Tennessee and County of Shelby, against M. J. Wicks, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in the city of Jackson, on this 15th day of January, A. D. 1877, and of the independence of the United States the 101st year.

[SEAL.] JNO. H. FREEMAN, *Clerk.*

(Endorsed on cover:) Tennessee Sup. Court. No. 648. M. J. Wicks, plaintiff in error, vs. The State of Tennessee and the County of Shelby. Filed 3rd February, 1877.